



OPEN LETTER TO THE PROSECUTOR OF THE GONAÏVES TRIBUNAL OF FIRST INSTANCE, Mag Sérard GASIUS, CONCERNING THE RABOTEAU MASSACRE TRIAL CASE FILE

Port-au-Prince, July 15, 2020

Mag Sérard GASIUS, Esq.
Prosecutor
Gonaïves Tribunal of First Instance
In his chambers.-

To the Prosecutor,

The *Bureau des Avocats Internationaux* (BAI) and the *Réseau National de Défense des Droits Humains* (RNDDH) write to inform you that they have taken note of your declaration, published in *Le Nouvelliste* on Friday July 10, 2020, # 41098 stating that, in your capacity as *head of proceedings, holder of the true and only right to public action*, you do not have in your possession the case file for the Raboteau massacre, claiming that the *Court of Cassation* had not returned it to the *Gonaïves Tribunal of First Instance's Administrative Office* after having rendered its judgment.

This action shows your misreading of the case file and the trial in absentia, and risks facilitating the eventual freedom of the criminal Emmanuel Toto CONSTANT while allowing the absentees, notably the torturers Jean Robert GABRIEL, Louis Jodel CHAMBLAIN and their associates, to remain at liberty.

To this effect, BAI and RNDDH would like to make you aware that in the Raboteau case, there were two trials, taking place from October to November 2000, giving rise to two distinct judgments: the first on November 10, 2000, in which the criminals arrested and brought to the tribunal were judged and convicted and the second, on November 16 of the same year, where the accused fugitives were judged and convicted in absentia by the *Gonaïves Criminal Tribunal*.

Unfortunately, as a result of political interference the first judgment was overturned by the *Court of Cassation* in a politically motivated judgment on March 3, 2005, just one year after the coup

d'état of February 29, 2004. Nonetheless, the second judgment concerning Emmanuel Toto CONSTANT, Raoul CEDRAS, Jean Robert GABRIEL Louis Jodel CHAMBLAIN and their associates was not subject to an appeal at the Court of Cassation, and in any case, moreover, absentees had no right to appeal per article 372 of the Code of Criminal Procedure, which stipulates that "*appeals to the Court of Cassation will not be available for judgments in absentia, only to the Prosecutor and Partie Civile, to the extent that they concern them.*"

As a result, you, the *Prosecutor*, are headed in the wrong direction by looking to the *Court of Cassation*.

To alleviate the procedural fumbling around the convictions in absentia already seen in the system and to make up for the negligence and intellectual laziness of the magistrates – who have over and over again been shown to be toxic to the rule of law, as well as for your information, BAI and RNDDH are making available to you the following documents related to the judgment in absentia of November 16, 2000:

1. The reference ordinance of the instructing judge, Mag Jean SENAT FLEURY, of August 30, 1999;
2. The order of the *Gonaïves Court of Appeals* of February 15, 2000, concerning the August 30, 1999 reference order of the instructing judge;
3. The order of the *Court of Cassation* of May 15, 2000, concerning the judgment of the *Gonaïves Court of Appeals* of February 15, 2000;
4. The indictment of Me Louiselmé JOSEPH, Substitute Prosecutor of the Gonaïves Court of First Instance of September 4, 2000;
5. The judgment of the *Court of Cassation* of May 3, 2005, concerning the judgment of the *Gonaïves Criminal Tribunal* of November 16, 2000;
6. Le Moniteur of November 23, 2000, publishing an excerpt of the court registry record of the contempt judgment of November 16, 2000.

In addition, with the exception of the absentee Emmanuel Toto CONSTANT, none of the other absentees have been arrested, nor been incarcerated since the judgment of November 16, 2000. To reiterate, this means that there is still no ordinary way to proceed, the reason being that the judgment in absentia and the relevant procedures have not been exhausted in conformity with the first paragraph of article 375 of the *Code of Criminal Procedure (CIC)* updated by Jean VANDAL.

Furthermore, you, ***Prosecutor***, in your capacity as *head of proceedings, holder of the true and only right to public action*, are charged with the investigation and prosecution of all misdemeanors and felonies within the jurisdiction of the correctional and criminal Tribunals of First Instance, according to article 13 of the *Code of Criminal Procedure (CIC)*.

BAI and RNDDH would like to bring to your attention that the other absentees duly identified in the judgment package of November 16, 2000, continue to circulate freely in cities across the country, in plain view of everyone. They benefit from the impunity built within the country's criminal justice system.

For this reason, in response to this situation, BAI and RNDDH call upon you to bring all of them

to justice, through a fair trial. As a result, it is urgent and necessary for the ***Prosecutor, born defender of society, head of proceedings, holder of the true and only right to public action***, to issue formal charges such that the other absentees whose names appear in the aforementioned package of judgments are arrested, then placed in the *Gonaïves Civil Prison* so that justice can be served, in conformity with the relevant laws.

With hope that you warmly welcome the present communication, *Prosecutor*, BAI and RNDDH wish you well.

[Signature]

Mario JOSEPH, Esq.
BAI

[Signature]

Pierre ESPERANCE
RNDDH

C.C.:

Minister of Justice and Public Security | Superior Council of Judicial Power (CSPJ)
Inter-American Commission on Human Rights (IACHR) | High Commissioner on Human Rights
International Federation for Human Rights | Human Rights Watch | Amnesty International